

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

IN RE:

CASE NO. 04-3219-3P3

JULIUS K. BROOKS and  
CYNTHIA S. BROOKS

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**FINDINGS OF FACT AND CONCLUSIONS OF  
LAW**

This Case is before the Court upon Debtors' Amended Objection to Claim Thirteen (13) filed by Mortgage Electronic Registration Systems, Inc. c/o Aurora Loan Services, Inc. ("Aurora"). After a hearing held on February 1, 2005 the Court makes the following Findings of Fact and Conclusions of Law.<sup>1</sup>

**FINDINGS OF FACT**

1. On March 29, 2004, Debtors filed for Chapter 13 bankruptcy relief.
2. Debtors are the owners of real property located at 1905 W. Hawkins Cove Drive, Jacksonville, Florida.
3. On January 21, 2002, Debtors executed a promissory note and mortgage on the above mentioned real property. Creditor holds the note and mortgage upon Debtors' real property.

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<sup>1</sup> At the conclusion of the February 1, 2005 hearing the Court directed the parties to submit three items to the Court by March 4, 2005. The three items included, (1) Memorandum of Law (2) Findings of Fact and Conclusions of Law and (3) an Order. However, Debtors' counsel failed to submit the above mentioned items to the Court by the due date. Additionally, Debtors' counsel failed to notify the Court that it would need an extension to file the required items, until almost the close of the Court's business day on March 4, 2005, the day the items were due. Accordingly, the Court denied the Motion for Extension.

4. On March 24, 2004, the Fourth Judicial Circuit for Duval County, Florida entered a Final Judgment in favor of Creditor in the amount of \$155,750.55. (Creditor's Ex. 2) of the total judgment amount \$1,424.05 was for real estate taxes and \$651.00 was for hazard insurance. Id.

5. The Fourth Circuit also awarded "subsequent interest at the statutory rate and such further costs as may be incurred by the Plaintiff in this action, including, but not limited to the sale fee and publication of the Notice of Sale, and any other reasonable advances made by Plaintiff ..... which are proper under the terms of the Note and Mortgage foreclosed herein." Id.

6. On April 3, 2004, Creditor filed a Proof of Claim in the amount of \$156,637.70 and a pre-petition arrearage of \$12,591.21.

7. On November 9, 2004, Creditor filed an Amended Proof of Claim in the amount of \$156,148.34 and a pre-petition arrearage of \$12,101.85.

8. On December 7, 2004, Debtors filed an Objection to Creditor's Amended Proof of Claim. Debtors' Objection stated that the arrearage amount stated in the Proof of Claim was incorrect and did not accurately reflect the amount Debtors owed.

9. Debtor, Julius Brooks, gave inconsistent testimony at the hearing as to whether there were sufficient funds in escrow to pay for the real property taxes and insurance.

**CONCLUSIONS OF LAW**

"A proper Proof of Claim is presumed valid, and as prima facie evidence of the validity of both the claim and its amount." In re Marineland Ocean Resorts, Inc., 242 B.R. 748, 757 (Bankr. M.D. Fla. 1999). Unless an interested party objects a claim is allowed as filed. Once an objection is filed, the objecting party bears the burden of overcoming the presumed validity of the claim with affirmative proof. Id. If the objecting party overcomes the presumed validity of the claim, the claimant must establish the validity and amount of the claim. Id.

Creditor asserts the Amended Proof of Claim is consistent with those amounts awarded in the Final Judgment as well as the amounts allowed pursuant to the terms of the note and mortgage. Debtors assert that the claim is inaccurate. At the hearing, Debtor, Julius Brooks, testified that the

escrow balances were sufficient to pay the real property taxes and insurance. However, Debtors' were not able to produce any evidence that creditor's claim was inaccurate. Additionally, Debtor, Julius Brooks, testified under cross-examination that he had not made all the necessary payments and that there may have been insufficient funds in escrow to pay for the real property taxes and insurance. This testimony is inconsistent with his earlier testimony, in which he asserted that the escrow account balances were sufficient to pay the taxes and insurance.

The Court finds the Debtors did not present sufficient evidence at the hearing to overcome the presumed validity of Creditor's claim.

### **CONCLUSION**

Based upon the reasons stated above, the Court will Overrule Debtors' Objection to Claim Thirteen (13). The Court will enter a separate order in accordance with these Findings of Fact and Conclusions of Law.

Dated this 15 day of March, 2005 in Jacksonville, Florida.

George L. Proctor

George L. Proctor  
United States Bankruptcy Judge

cc:  
Robert J. Slama  
Kelly M. Ballard